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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK I. SOKOLOW, et al,

Plaintiff,

v.

04 CV 00397

PALESTINE LIBERATION
ORGANIZATION, et al,

Defendant.

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New York, N.Y.
November 20, 2014
11:30 A.M.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

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1 THE DEPUTY CLERK: Be seated. I think the court
2 reporter has everyone's appearances, and I have them in front
3 of me, we need not go through that.

4 (Case called)

5 THE COURT: Okay. All right. First of all, I have
6 rendered a decision on the summary judgment motions. You
7 should have that. If you don't, then let the Court know.

8 I intend to keep us on schedule. We are going to
9 trial in January. January 12 is our trial date. I'm working
10 with Jury, in terms of how we're going to coordinate jury
11 selection.

12 There are a number of issues that they noticed as
13 issues that are outstanding and need be resolved between now
14 and then. And I intend to resolve them as early as possible.

15 Today, I'm going to give you some indication of what
16 my position is, and I'll be issuing decisions or orders with
17 regard to some other issues. And then we can discuss my
18 position and the scheduling for deciding some other issues.

19 But, now that summary judgment motions are put aside,
20 let me first just go through some other issues.

21 I am going to issue an order overruling plaintiff's
22 objections to Judge Ellis' denial of the motion for sanctions.

23 And I am denying the request that this Court impose
24 evidentiary sanctions for defendant's failure to timely produce
25 documents from the PA General Intelligence Service.

1 I have reviewed the decision by Magistrate Judge
2 Ellis, and the circumstances that have been indicated that were
3 relevant to that motion. I agree with Judge Ellis, that the
4 determination of the circumstances, as presented to him, do not
5 warrant sanctions as argued by the plaintiffs. So I am going
6 to deny that motion; overrule those objections, deny that
7 motion. And I'm going to issue an order within the next few
8 days to that effect.

9 Let me go to the defendant's motion for separate trial
10 and bifurcation. I'm going to deny that motion for separate
11 trials and for bifurcation of the liability and damages phases
12 of the trial. I see no real efficiency in doing that, nor any
13 requirement that that need be done.

14 I think that my decision with regard to summary
15 judgment has streamlined some of the case and eliminated some
16 issues. I have also determined that a significant amount of
17 evidence might even otherwise be admissible, even if other
18 plaintiffs were not in the same case. And I see no undue
19 prejudice to the defendant in efficiently trying all of these
20 related issues, and putting it before the jury, and putting the
21 issue of liability and damages before a jury which can hear the
22 evidence. Bring in all of the witnesses at one time, present
23 all of the evidence, and have them make the determinations as
24 to individual plaintiffs and individual claims. And I think
25 that that can efficiently be done without prejudice to either

1 party, so I'm going to deny that motion.

2 With regard to the process, I'm just going through the
3 ones that I think I have already sufficiently satisfied myself
4 as to what my ruling was going to be and had an opportunity to
5 review the relevance submissions and material.

6 With regard to the plaintiff's motion for an anonymous
7 jury, I'm going to grant that motion. To the extent that the
8 names and addresses and workplaces of the jurors in the jury
9 panel, when we give them questionnaires, and continue through
10 the jurors that are selected, I am going to have that
11 information not provided.

12 I'm thinking about a process, and have already been
13 discussing with the jury panel, a process for getting access to
14 enough jurors, going through and having them fill out the
15 questionnaires, and having them appear before the parties.

16 My thought, and we can discuss it further, I will take
17 some suggestions. Because it's January, the number of cases
18 that are scheduled for trial, we will either have a jury panel
19 on the 12th who will be here to start and fill out
20 questionnaires, or to ensure that we have enough jurors, I may
21 bring the jurors in a couple of days earlier so that I don't
22 have to compete with my other colleagues for jurors. I have
23 already been notified that there are a number of trials that
24 are scheduled. It's clear to me that, as it exists now, there
25 are not -- if all of those trials go, there are not enough

1 jurors who are going to be here on that day to satisfy all of
2 the judges who want to try cases on that day.

3 So I'm in the process of ordering additional jurors
4 and on deciding whether or not we can get those jurors on the
5 12th or if we have to get them Monday, the 12th, or we have to
6 get those jurors maybe Wednesday, Thursday, or Friday the week
7 before.

8 As a matter of fact, I can say even publicly on the
9 record, that Judge Cogan, I have spoken with him about the
10 process, procedurally, how he has proceeded with his case that
11 he tried with regard to the bank. And, you know, in terms of
12 how he selected jurors, the questionnaires, those kinds of
13 things. So he has been very helpful to me in that regard.

14 And what I anticipate, is doing some of the things
15 that I think were appropriate in that case, to do here, and
16 some other things which I think are more appropriate for this
17 case, that may not have been relevant to his case. What I
18 think that we will need is, clearly, we need no less than 100,
19 probably no more than 300 jurors to fill out questionnaires.
20 My thought, right now, is to figure out whether or not 200
21 jurors will be enough to start with in terms of questionnaires.
22 At this point, given the estimated 10 to 12 week trial, which I
23 hope will end up being less -- I'm not sure that the nature of
24 the live witnesses is going to warrant that time frame. But
25 we'll go with that time frame if that is what the parties still

1 think at this point that it is going to take. But as we get
2 closer, we'll talk about, more specifically, what's going to be
3 admissible and what witnesses are really going to testify, how
4 long it will take to present them.

5 But what I anticipate is, right now, my thought is the
6 cover sheet that I looked at, which was proposed by the
7 parties, I probably won't use. Because I'll probably tell the
8 jurors that I don't want that information. What I'll probably
9 say to them is that, in order to give them a full opportunity
10 to be as forthcoming and candid as they possibly can with
11 regard to actually answering questions on the questionnaire,
12 that I will assign them numbers. And they will fill out
13 questionnaires based on the number that is assigned to them.

14 To assist the parties, I'm thinking about doing this,
15 it's bringing in, if logistically it works and makes sense, to
16 maybe bring in the jurors. And maybe if we have as many as 200
17 or 300, we may have to go to the ceremonial courtroom so we can
18 get everybody in the room at the same time. I would like to
19 get all of the jurors in the room at the same time. And I
20 would like to call the jurors up to get their questionnaires
21 that are numbered, so that will at least give the parties an
22 opportunity to see who the individuals are.

23 I think that's an advantage that's sometimes not
24 given. I think it would be helpful to the parties to make
25 informed judgments about jury selection in this case. At least

1 even if we don't disclose the names and addresses and
2 workplaces, the work addresses of the potential jurors, that
3 you see what they look like in terms of juror number one, and
4 in terms of potential juror number one, in terms of potential
5 juror number 12 to 200, 300, so you can factor that in your
6 assessment of the juror, evaluation of that juror.

7 I have to go through, and I have gone through, the
8 proposed questionnaire with the objections. Quite frankly,
9 which is not surprising, I agree with some on one side, and
10 agree with others on the other side. And there is some things
11 you both agree to that I'm not sure that I agree to.

12 I'm a little concerned, I can tell you, about the
13 direct nature of the questions about people's religions. I am
14 probably going to see if I can fashion a question that might go
15 more directly to whether or not they have any views, religious
16 or political or otherwise, that might affect their ability to
17 be a fair and impartial juror. I am not comfortable with the
18 questions are you Jewish, are you Muslim, are you -- those
19 kinds of questions. But I'm going to think that out more and
20 we can talk about that further as we get closer.

21 But I'm still trying to figure out a process for after
22 we get the questionnaires. What I want to do is get the
23 questionnaires the first day, and maybe give you a day or two
24 to go through the questionnaires. And, then, a process for
25 having you get, to me, people that we can all agree, or at

1 least are at least eligible to serve as jurors.

2 My thought at this point is to -- I'm thinking about
3 impaneling about 16 jurors. And whatever 10 are left at the
4 end of the case, they will render a verdict in this case, and
5 impanel them in the order in which they were randomly assigned
6 numbers.

7 So, what I would like to do is end up with a number of
8 jurors, at least a number that are qualified to serve, and a
9 number for which we will end up with 16 if the parties exercise
10 all of their peremptory challenges. And at this point, I
11 intend to stick with three peremptories per side. And we can
12 discuss that further. But I don't, given the process with the
13 questionnaire, I'm not sure I see a need for any greater number
14 of peremptories. But we can discuss that. And so be able to
15 have at least 22, exercise peremptories, and end up with 16 to
16 sit through the trial. First 10 will decide the case.

17 But I have a lot more work to do with the jury
18 questionnaire, so we can discuss that. And, hopefully, we'll
19 be in a position to discuss that the next time we meet.

20 Or, I can even give you something to look at and work
21 on and propose, or urge me to change, or object to before the
22 next time we are scheduled to meet, which is December 16th.

23 So we can discuss that process further, but that's
24 sort of the general framework of where I am in conjunction with
25 all of the other things that I have to do on this case, in

1 terms of how far I have gotten in terms of thinking about the
2 process of jury selection.

3 So to that extent, I would anticipate that we can pick
4 16 jurors. I want to make the record clear that I am not
5 compelled, at all -- I am confident to say the record does not
6 support any conclusion or argument by the plaintiffs that
7 sequestration and an anonymous jury is warranted because of
8 some possible threat or danger to jurors and, particularly, on
9 the part of the defendants.

10 The reason I think that we should proceed with the
11 anonymous juror, is that my primary concern is to make sure the
12 jury selection and jury's evaluation of this case is not
13 influenced by any outside influences. And I don't know who is
14 going to have an interest in this trial. I don't know who is
15 going to show up for this trial. I don't know what people are
16 going to say in this trial. So to the extent that -- I guess
17 I'll finish with my ruling with regard to the motion. Because
18 the motion was for an anonymous jury, a sequestered jury, or at
19 least partially sequestered jury.

20 I'm going to grant the anonymous jury, only to the
21 extent, as I say, the names, addresses, and workplaces of the
22 potential jurors, and jurors will not be revealed.

23 I am going to deny the motion for sequestration during
24 the trial. I think that this case is a civil case. It doesn't
25 warrant sequestration. I think that there is a significant

1 danger of prejudice to the parties to make them think that
2 somehow this case warrants sequestration because of some
3 dangers to the jurors, or some other related issue.

4 So I am going to deny the plaintiff's motion that the
5 jury be sequestered during the trial and during deliberations.

6 I will say this. We will discuss, and I will take
7 reasonable steps, to ensure a fair and impartial juror is not
8 tainted by outside influences during trial, during juror
9 selection, trial, and deliberations. So whether or not that
10 means that, as minimal as simply nobody leaves the courtroom
11 until all of the jurors are off the floor, to whether or not we
12 have court officers that are assigned to this case that ensure
13 that the jurors are escorted out of the building, or some other
14 process so that the jurors go one way and the parties and
15 lawyers go another way.

16 And that is of concern to me. Some of you may already
17 know that I was in a criminal trial within the last year, in
18 which the issue during the trial was that a lawyer in the
19 criminal case claimed that the juror and defendant were trying
20 to get into the same cab at the same time, and the defendant
21 happened to get there first, and that the juror gave the
22 defendant the finger after the defendant jumped in the cab.
23 And it ended up being an issue. When that occurred, it
24 affected a very high profile trial that we were trying for
25 about six weeks. So I'm sensitive to those minimal issues, and

1 sensitive to a little bit more control over the jurors and
2 doing what is reasonable, without prejudicing the case, to make
3 sure that they are not affected by anything outside of this
4 courtroom during the trial, or during their deliberations, or
5 even during jury selection.

6 So I'm going to go ahead and I will issue an order to
7 that effect in the next couple of days.

8 I will characterize this as -- I have notice of a new
9 Second Circuit authority, Daimler, referring to Gucci. I will
10 consider that to be a renewed motion for reconsideration. I'm
11 not going to change my decision with regard to the jurisdiction
12 issue. And I am going to issue a short order or opinion, also,
13 probably in the next several days.

14 First of all, I will indicate for the record here
15 that -- and I'll make it, make that order or decision
16 consistent with that, that the motion was not denied based on
17 weight. I heard the merits of this argument. And my
18 determination was that, and still is, that the PA and PLO's
19 continuous and systematic contacts with the U.S. is sufficient
20 to support the exercise of general jurisdiction apart from that
21 standard. And even undertaking the further common analysis, a
22 certain person of jurisdiction does not conflict with any
23 foreign country's applicable laws or sovereign interests. This
24 case does fall, I believe, outside of the traditional analysis
25 that the Court in Daimler and also in Gucci laid out with

1 regard to a foreign corporation. Even if the defendant is a
2 foreign corporation, where the traditional analysis and place
3 of the corporation and principle place of business would be
4 controlling, it is that rare instance that the Court referred
5 to in Daimler in which an analysis of the business, commercial
6 or otherwise appropriate contacts with the U.S. were so
7 continuous and systematic that it is sufficient to support the
8 exercise of jurisdiction. That was my determination on the
9 merits, originally. That's still my determination.

10 My position was, with regard to Daimler, I did not
11 preclude the defendants from making that argument based on
12 waiver. But, I have indicated that Daimler does not change --
13 an analysis under Daimler does not change my determination that
14 a certain personal jurisdiction under the ATA or PA and PLO,
15 based on the conclusion that their continuous and systematic
16 contacts render it at home in the U.S. is still an appropriate
17 decision, and is not a contravention of the laws of any foreign
18 country in going further with the common analysis.

19 So that assessment, I think that assessment is
20 consistent with the rule in Daimler. It is consistent with the
21 rule in Gucci. And further, I should add that Gucci -- not
22 only does Daimler deal with primarily the circumstances dealing
23 with a foreign corporation, it discusses traditional analysis
24 and place of incorporation and principle place of business,
25 which I think this circumstance uniquely isn't compelled by

1 that strict analysis that Gucci deals with. I think it is
2 important that Gucci also deals with a different circumstance.
3 It deals with whether or not, specifically whether or not a
4 bank's branches in the forum is sufficient to assert general
5 jurisdiction. And the Court in Gucci said that that is not
6 sufficient under Daimler. And I don't disagree with that. And
7 I don't think that my decision is in conflict with that.

8 So I am going to issue a decision or order on that,
9 indicating that I have reviewed the subsequent authority that
10 was submitted to the Court and my decision with regard to
11 personal jurisdiction is still the same.

12 I still have a number of issues to address, work left
13 to do. I want to see -- as I say, I already indicated I think
14 the last time we discussed it, what time frame I was trying to
15 deal with issues. I want to still see if -- I'm not sure I
16 will be able to address all of the motions in limine, and the
17 motion to the objections to the 177 trial exhibits, by
18 December 16th. But that's my goal at this point. Minimally, I
19 want to address the 177 trial exhibits and see if I can
20 address, additionally, by that time, the motions in limine to
21 exclude the experts, so you can know as early as possible what
22 my position is with regard to the experts. But I know there
23 are related motions in limine to exclude certain fact witnesses
24 and further objections to trial exhibits that should be
25 addressed. And even objections to deposition designations,

1 which I will get to as soon as possible, if not by that date,
2 clearly after.

3 I am going to first concentrate on the 177 trial
4 exhibits, motion objections, experts. And, also, I want to
5 spend some time, between now and then, trying to get to at
6 least a draft of the jury questionnaires. Because I think I
7 want to give you as much time as possible to think about the
8 jury selection.

9 With regard to the proposed jury instructions given,
10 we can discuss whether or not you want to submit something
11 different, or further, or less, given the nature of my summary
12 judgment decision. It obviously moots the jury instructions
13 with regard to the state claims. And it defines, limits the
14 nature of the ATA claims against certain plaintiffs against the
15 defendants.

16 Obviously, we don't -- I will try to give you as much
17 guidance as possible on jury instructions as early as possible,
18 but I think that the first priority is something we are going
19 to need at the end of the trial, not necessarily the beginning
20 of the trial. But we'll try to get them in as an early
21 indication of what you can anticipate is the final jury
22 instructions, as early as possible. Some indication before
23 trial, and if not a final indication prior to trial.

24 The only other issue, and then I will let you raise or
25 ask questions about the things that I have focused on. Also, I

1 want to work on a verdict form. Quite frankly, I find
2 sometimes it is easier to try to put together a verdict sheet,
3 verdict form, before doing the jury instructions, because
4 that's where we want the jury to end up. So I will try to get
5 something consistent with my summary judgment ruling to you as
6 early as possible.

7 The only other issues that I have written down is the
8 question, is the application from three, I believe three
9 individuals, who have identified themselves as representatives
10 of the press, to intervene and unseal certain, unseal all of
11 the material that has been under the confidentiality order part
12 of the agreement and protective order of the Court.

13 I am not going to make a final decision on that
14 until -- well, let's put it this way. I'm not going to make a
15 final decision about disclosing material until I have made a
16 determination as to what material is admissible at this trial.
17 So I will either postpone the decision on that -- I know I have
18 gotten a response to the motion. I didn't know whether or not
19 I was going to get a further response or a reply. So over the
20 next couple of days, I'll see if that is coming. But
21 my inclination at this point is to either deny the application
22 to intervene without prejudice to renew, or to postpone the
23 decision on that until I have made some decision with regard to
24 the admissibility of exhibits.

25 My overarching approach is that the standard sort of

1 redacted material of identification numbers, and addresses, and
2 things like that of individuals, that kind of material will
3 probably not be disclosed. Maybe even some further material
4 with regard to the identities of certain individuals not really
5 directly involved in disputes between the parties. Maybe some
6 of that, in terms of redaction. My initial guidance, and I'll
7 see whether or not that's an appropriate way for me to look at
8 things, but my initial thought is that the material that will
9 be admissible at this trial will be publicly available. The
10 material that is not determined to be admissible at this trial
11 will probably not be public material.

12 There is some, I don't say dispute, but it seems to be
13 some disagreement about the extent to which judicial material
14 is under seal or protective order, and it is not. I know that
15 the defendant's position is basically that most of the judicial
16 record is already, judicial documents as the interveners want
17 to characterize it. The defendant's position is mostly that is
18 already public. I mean that's true and not true. And some of
19 it is, some of it isn't, and some of it is redacted, and some
20 of it is still under seal.

21 You know, I am not sure that it's clear that all --
22 I'm not sure that all of the motion papers are fully available
23 either as motions on related submissions, or -- and clearly not
24 fully available in unredacted form. But we can discuss that.
25 I'm more concerned about I can't spend the time going through

1 each document, each redacted document. But I'll set basic
2 guidance for what is going to be disclosed and not disclosed.
3 And my first basic guidance is that those materials that are
4 admissible at trial will be disclosed at the appropriate time.
5 The reason for my delay in making the decision and even,
6 depending on what the decision is, will be a delay in making
7 those disclosures. Because, clearly, I do not want to
8 prejudice a potential juror that's not even selected yet, or
9 prejudice the jury that is selected prior to the beginning of
10 this trial.

11 So I want to minimize the kind of isolated material
12 that others who may wish to publicly disseminate it may wish to
13 comment upon and take a risk that that was going to prejudice
14 the parties in this case, one side or the other, with regard to
15 being able to select and maintain a fair and impartial jury for
16 the trial and during the trial.

17 So, I will start to look, again, at the categories of
18 material that are at issue, and what things are relevant and
19 admissible, that will be at this trial.

20 Pretty much I can say that the parties should
21 anticipate that if it is going to be admissible at this trial,
22 other than personal information and standing redacted
23 information in the trial, if there are documents that are going
24 to be put before this jury, they are documents that are going
25 to be disclosed publicly. We can discuss that further as I get

1 a better handle on the documents and get a better handle on
2 what is really at issue here.

3 So, as I say, obviously, there is a lot for all of us
4 to do between now and January. That's where I am.

5 As I say, I have done a significant amount of work,
6 but I have a significant and greater amount to further
7 undertake. But that's my approach.

8 You know, I will try to do as much as we can do
9 between now and December 16th, and only put off the things
10 that, in my judgment, the parties, it will still give the
11 parties an opportunity to be ready for trial, and will not be
12 issues that the parties would necessarily have been better off
13 if they had somehow gotten a decision on that much earlier.

14 So as I say, things like final jury instructions and
15 that sort of stuff, obviously we need that. And you would like
16 it as early as possible. But I don't think that is a priority
17 over some of the other things. And I think you'd probably want
18 better guidance as to particularly with regard to what
19 documents and witnesses and testimony of witnesses that's
20 likely to be admissible as early as possible. So that's where
21 I'm going to concentrate, first, between now and December 16th.

22 So that is pretty much where I am. And why don't I
23 turn to the parties, and you we can discuss it further, or you
24 can discuss other issues that you think we ought to be focused
25 on.

1 THE COURT: Start with the plaintiff.

2 MR. YALOWITZ: Thank you. First of all, your Honor, I
3 want to thank the Court for all of the hard work that you and
4 your chambers are doing. I can tell that the Court is working
5 as hard as we are. And we will be ready and I'm sure you will
6 be ready, as well.

7 There are sort of three things I want to talk about
8 with you today.

9 First, I need some guidance from you on the scheduling
10 in terms of how many days a week does the Court plan to sit,
11 how long are those days. I notice your Honor was scheduling
12 some sentencings and other things in late March that seem to be
13 sort of random days.

14 THE COURT: I assume we are going to be finished by
15 then.

16 MR. YALOWITZ: I'm going to work real hard for that,
17 but I can't control how long the defendants take for cross or
18 for their case, as you know. What I would like to do is have,
19 as early as possible, as clear an idea of what time are we
20 going to start in the morning, what days are we going to sit.

21 THE COURT: Sure.

22 MR. YALOWITZ: Because most of my witnesses are from
23 out of town.

24 THE COURT: Sure.

25 MR. YALOWITZ: While I --

1 THE COURT: I can tell you that now.

2 MR. YALOWITZ: Great.

3 THE COURT: We will start 9:45 or 10:00, depending on
4 how quickly the jurors arrive. And we'll usually schedule one
5 or two small matters, quick matters, like at 9:30 on some days,
6 that I can't put off. So I'll get those done before 10:00. So
7 we can start as early as 9:45 with the jury's day. And as late
8 as 10:00. I intend to try the case every day that is not a
9 holiday. And I intend to try the case full days, which means
10 that's sometime between 4:30 and 5:00 most days. So, I would
11 anticipate a flow of witnesses and evidence between as early as
12 9:45 in the morning to as late as 5:00, five days a week.

13 MR. YALOWITZ: Okay, that's excellent, your Honor.

14 One small wrinkle that we'll just have to be aware of.
15 Some of our witnesses are orthodox Jews. And we're going to
16 have to get them out of the courtroom pretty early in January
17 on Fridays. So there may be -- we just may have to work around
18 that a little bit.

19 THE COURT: And what do you think, are you thinking at
20 this point 3:00 or --

21 MR. YALOWITZ: I don't -- you know, it is -- I don't
22 observe it, so I don't -- I don't have it kind of -- but I
23 think that's -- I tried a case with Judge Kahn and that's what
24 he used to do about 2:30, 3:00 he would wrap it up.

25 THE COURT: Well, you know, I --

1 MR. YALOWITZ: But it depends on the witness, too.
2 Because we have a lot of witnesses who, you know, they are
3 going to be fine.

4 THE COURT: Right. So I would try not to put those
5 witnesses on for Friday afternoons.

6 MR. YALOWITZ: Yeah.

7 THE COURT: I am sure that on certain days,
8 particularly if we are starting to go weeks, I would probably
9 pick a few Fridays where we would adjourn a little early for
10 the jurors, to give them a little rest, a longer weekend.

11 At this point, we are talking about January 19th as a
12 holiday.

13 MR. YALOWITZ: Right, President's Day.

14 THE COURT: We are talking about February 12 is
15 usually a day this Court is closed. Not an official holiday,
16 Lincoln's birthday. Depending on where we are and how many
17 weeks we really anticipate, the question is if we are off
18 February 12th, the question is whether we are going to be
19 sitting Friday, February 13. If we need that day, we will. If
20 it looks like we're ahead of schedule and we don't need that
21 day, I might give the jurors, and you, a longer weekend on
22 that. But that's fairly early in the trial, so I'm not sure
23 that that is going to be appropriate. But, again, depends on
24 what the jurors' plans are, too. Because a little bit of the
25 awkwardness is that February 12 is Thursday. February 16, the

1 Monday, is President's Day. So Thursday is a holiday, Monday
2 is a holiday, but Friday is not a holiday. So, we'll talk
3 about that. And we'll plan tentatively around that and for
4 that. But you know, we'll do a full March, if we need a full
5 March. But I'm not -- I mean, as a matter of fact, at this
6 point, approximately how many live witnesses do you think that
7 you would call?

8 MR. YALOWITZ: I think that I am going to have about
9 50 live witnesses, your Honor. I have to sort of think through
10 how your Honor's ruling of yesterday --

11 THE COURT: Sure.

12 MR. YALOWITZ: -- affects that.

13 I know some of the witnesses are going to be shorter,
14 economists who are going to opine on the damages for some of
15 the witnesses that got knocked out. But, directionally, it is
16 kind of 45, 50 witnesses, many of whom I hope, and expect, will
17 be on and off quite quickly.

18 THE COURT: Right.

19 MR. YALOWITZ: You know, I don't think we need family
20 members to spend three days on the witness stand or anything
21 close to that. So it's just a matter of we've got to line them
22 up, get them on, get them off. And it's, truthfully, it is a
23 logistical challenge, but having the five-day week is going to
24 be very helpful in that regard.

25 THE COURT: Right. And, you know, I am anticipating,

1 as I say, usually, the lawyers tell me that they anticipate the
2 case to be a certain length and, usually, it is. I don't
3 anticipate it being that long. And it's usually not that long.

4 My basic rule is that there should be a witness on the
5 stand, there should be a witness in the witness room waiting,
6 so that we don't have any gaps, so we can move efficiently. I
7 would think that the nature of this case and the nature of the
8 witnesses are that we might be able to do somewhere between
9 three and six witnesses a day, and some days even more than
10 that.

11 So if you are talking about six witnesses a day, I'm
12 not good at math, that's why I became a lawyer, but now we are
13 talking about nine days of trial.

14 MR. YALOWITZ: Yeah.

15 THE COURT: Nine days of testimony. So that's not
16 nine weeks of testimony.

17 MR. YALOWITZ: Right.

18 THE COURT: So as I say, we put aside 10 to 12 weeks,
19 so unless they have a case that is twice as long as yours,
20 which I don't anticipate, this is not going to be a 12 week
21 trial.

22 MR. YALOWITZ: I hope you are right. I don't think
23 we're going to do six witnesses a day at the beginning.

24 THE COURT: Right, no, I understand. I'm talking
25 about an average, over the time period.

1 MR. YALOWITZ: So, but look, we'll learn together.
2 One of the things I have learned is I'm very bad at predicting
3 how long a trial is going to take. I had one in front of Judge
4 Gleeson that we all thought was three days, and it was four
5 weeks. So you just can never tell, but, okay, that's great.

6 THE COURT: That's my best guidance.

7 MR. YALOWITZ: Very helpful.

8 THE COURT: At this point, I'm going to devote and
9 even the matters you see me schedule during a trial, what I
10 will do is sort of anticipate, the weeks before, whether or not
11 there are one or two of those matters that can be handled,
12 whether we can shift them. If I have oral argument scheduled,
13 they will have to step aside, unless there is some reason we
14 cannot sit or are not sitting on that date. And you'll have
15 full days, and all day, in full weeks until we finish.

16 MR. YALOWITZ: Okay, that's great.

17 The second topic I just want to talk a little bit
18 about, the jury veneer. And I don't have it clearly in mind,
19 but I think if we're going for 16 qualified jurors in the box,
20 I am a little worried that 200 wouldn't be enough. You know,
21 my experience is anecdotal. I was actually a juror. I didn't
22 get picked, but I filled out one of those questionnaires on a
23 terrorism trial. And I think I was in the 400s as a juror.
24 And I know Judge Kaplan just picked a jury. And my partner was
25 also questioning. He was questioning. And he said there were

1 hundreds. But, look, the Court has experience in these kinds
2 of trials, and we do them in the Southern District. Just 200
3 sounded a little low to me, and I just put that out there for
4 your Honor.

5 THE COURT: As I say, I spoke to Judge Cogan in his
6 case -- I think he told me he had 200 or 300 and they ended up
7 with 10 jurors and didn't have a problem.

8 Now, you know, whether or not that would be a similar
9 experience, I don't know. I think that my thought is that at
10 least 200. Really, what it's going to do, it's really going to
11 depend on finding a place, particularly. Let's put it this
12 way. I have two choices, but we can discuss that as we get
13 closer. My choice is to simply have jurors fill out
14 questionnaires, give you the questionnaires, and then bring
15 those jurors in who are qualified to be brought in after that,
16 and that's when you meet them for the first time. I think
17 that's the way Judge Cogan did it in his case. If that's the
18 way you want to do it, that's fine with me, then logistically,
19 that's easy. But my intent was to, as they say, let you
20 eyeball the jurors before they even start filling out
21 questionnaires, and speak to the jurors. And emphasize the
22 importance of picking a fair and impartial juror, as I always
23 do. And a lot of the information that you have in the
24 questionnaires that I use, I will say to the jurors. I find it
25 much more compelling to say to the jurors than simply have them

1 read it on the form.

2 So I would rather have the potential jurors meet you
3 and me. And to have you see who they are. And have them
4 listen to what I have to say about the importance of being a
5 juror; that we need a fair and impartial juror, and despite the
6 length of the trial that I'm going to efficiently move forward
7 and not waste their time, and keep them informed on a daily
8 basis whether I think we're ahead of schedule, behind schedule,
9 on schedule. And give them those assurances that I usually
10 give jurors that, look, we're in this together; you know, I
11 have done this before. I'm going to keep control of the case.
12 I'm not going to waste your time. And we're going to present
13 this case to you in an efficient, effective manner. And be
14 able to at least have that initial conversation with them now.
15 If we can do that, that's fine. If it looks like we are not
16 going to be able to efficiently do that, and we should just
17 simply have them, you know, 300, 400, potential jurors fill out
18 questionnaires, and then have you go through the questionnaires
19 and the questionnaires that look like they are qualified
20 people, then bring them in and have you meet those people.
21 That's usually the way it is done -- not usually. That's the
22 way Judge Cogan did it. I have spoken to others who have
23 spoken to jurors before they fill out the questionnaires. My
24 preference is to speak to the jurors as early as possible. But
25 it's going to be limited in the capacity that I can find a room

1 to get all of the jurors in to be able to do that. And, quite
2 frankly, I think the only room that I am going to do that to
3 hold 200 or 300 potential jurors, is going to be the ceremonial
4 courtroom.

5 MR. YALOWITZ: Right, right.

6 THE COURT: So if I'm going to do that --

7 MR. YALOWITZ: I think that room is big enough.

8 THE COURT: But that still limits the number. So if
9 it is more than 200 or 300, and we're gonna speak to the jurors
10 first, we are going to have to do it twice.

11 So, you know, there is no way that, unless you say,
12 give me 500 jurors, let them fill out questionnaires, and then
13 we'll winnow it down to 100, then we'll bring them in and you
14 meet the hundred. If you want to do it that way, that's fine
15 with me. I don't have any problems with that. And that's an
16 effective way to do it. And I'm sure you can get a fair and
17 impartial jury that way. But if you want me to say, you know,
18 ladies and gentlemen, you have your cards, each of those cards
19 has a number on it. When we call your number, come up and get
20 your questionnaire. And I introduce myself. I introduce the
21 lawyers. I introduce the parties. Tell the jury what the case
22 is about, so they can start thinking about this. And tell them
23 what that process is. And, then, call them up individually and
24 hand them their questionnaires and have them go back to Central
25 Jurors and spend the rest of the day filling out their

1 questionnaires. And so you can size up, you know, Ms. X, or
2 Mr. Y, as you see them. And, you know, that gives you some
3 other, not necessarily legitimate basis to want them or not
4 want them, but at least you know what they look like.

5 MR. YALOWITZ: I'm sure Mr. Y would be an excellent
6 juror.

7 So, look, I like that idea. I like the idea of you
8 talking to them, and us, you know, being able to eyeball them.
9 And so I like that idea. And I think the ceremonial courtroom
10 is big enough to achieve it.

11 I like that idea a lot more, like maybe the sixth or
12 seventh of January, than I like it the twelfth of January.
13 Because, again, if we use that week before productively and we
14 get the cause challenges done, and we can actually pick the
15 jury on the morning of the twelfth and get started with opening
16 and witnesses, that's a lot better than kind of lingering as
17 the week of the 12 drifts by, and --

18 THE COURT: Well, as I say, part of it is in my
19 negotiations with the chief judge and the jury, so that we
20 could figure out how many people we can get in here. And, you
21 know, clearly, there are a lot of people. I mean it's the new
22 year. Clearly, the 12 -- there are a lot of judges who start a
23 trial. So we want that number. I mean we may be talking about
24 using the whole day's jury panel, which will give no one else
25 an opportunity to utilize that panel. So if we were to do

1 that, we may have to do that a day or two before the 12th, if
2 we want to grab all of those jurors.

3 MR. YALOWITZ: I would rather do it before the 12th
4 anyway, because that will help us with the --

5 THE COURT: If we can't get the jurors before the
6 12th, then that may define it, also.

7 MR. ROCHON: Before we turn away from that, your
8 Honor, I don't want to make Mr. Yalowitz nervous, but we agree
9 that it's better that the jurors first hear from the Court in
10 connection with their questionnaires and not some other person.
11 I don't think we get as much out of it, but I believe the
12 system works better when they hear it from you.

13 THE COURT: Yeah. Yeah, I agree. Jurors usually like
14 me, so. I'm on their side. They understand that very quickly.
15 Particularly, when I talk about being efficient, and moving
16 forward, and not wasting their time, and making sure that time
17 is used efficiently, and keeping them informed. And the jurors
18 get some assurance early on that -- and sometimes, I don't know
19 if I'll tell them in this case -- sometimes I tell them, look,
20 this is -- if this is a two or three week case, and you have a
21 good excuse why you can't do that for the next two, three
22 weeks, if I excuse you from this case, you don't go home, you
23 go back to Central Jury. You may go to one of my colleagues
24 who is not as nice as me. They may have a six-month trial for
25 you to sit on, and that may be the case you sit on. I

1 emphasize what their responsibilities are, that they are here,
2 and we expect them, and I don't listen to -- I cannot excuse
3 them because jury service is an inconvenience. They get
4 serious about it. And they take it seriously. And I find as
5 long as they know that I understand that this is a minor or
6 major disruption in their personal and professional lives, but
7 it is something that is important that is required of them, I
8 think they are very serious about taking on this
9 responsibility. And it's much easier for me to get a jury
10 panel.

11 MR. YALOWITZ: That's great. So let's do it that way.

12 THE COURT: We'll talk about it again on the next day
13 as we get closer, and I can get more information about what the
14 logistics would be.

15 MR. YALOWITZ: The other thing, just to sort of maybe
16 put in your mind, when you were talking, your Honor, about
17 figuring out some way to keep the jury from -- some process
18 with regard to assembly and, you know, arrival and departure.
19 And sometimes what the marshal will do is have a designated
20 spot, off the premises, and they can just assemble there and
21 come into the courthouse in a van from the marshals' office or
22 something, and that might be something that would work well.

23 THE COURT: I will think of those things. And we can
24 discuss them. As they say, I have to balance it with letting
25 the jury know that we respect their privacy. And, obviously,

1 they should decide this case solely on the evidence presented
2 at the trial, and not anything that they may read, or hear, or
3 be confronted by anybody who might have an interest in this
4 case one way or the other.

5 But I have to do that in the context of not making the
6 jury think that there is something they should be particularly
7 concerned about with regard to one of the parties, or somehow
8 thinking that, you know, this case is -- this is not a criminal
9 case in which the charges will give the jury some reason to
10 fear for their lives. And I don't want them to think that that
11 is the case. And I have to balance it. And I don't want to
12 be -- clearly, obviously, I understand that concern about not
13 being prejudiced in that way, thinking somebody should fear
14 something from the defendants. But, quite frankly, I find that
15 sometimes it turns out that some juror, in their mind, has some
16 concern about the plaintiffs, rather than the defendants. And
17 I have no control over it, and I don't know what people are
18 going to be like if they think that somehow I have to put a
19 hood over them and bring them in and out of the courthouse
20 every day. And so I will clearly set up some process so that
21 they are not interfered by, you know, by spectators or press or
22 otherwise. But I'm going to emphasize to them that's the
23 purpose of this. And I'm not going to make the sole choice of
24 somehow there is something else they should be concerned about.
25 I have spoken to other judges who have had cases, and this has

1 not been an issue. I know with Judge Cogan it wasn't an issue.
2 I think that this, ultimately, once we get started, the jury
3 will be able to handle this appropriately, and as seriously as
4 they would any other trial, civil trial in which, you know,
5 serious injury is alleged. And that, you know, defendants are
6 accused of serious conduct.

7 So, we can discuss it further. Whatever we can all
8 agree upon that would be comfortable, we'll do. To the extent
9 we can agree, I'll make an independent judgment about how and
10 what, how best to protect the jurors from those inappropriate
11 contacts with people outside of this court.

12 MR. YALOWITZ: Thank you.

13 One other -- I guess I have two other sort of process
14 issues for the Court.

15 One is I know the Court is going to be working on the
16 motions in limine. One of the issues that I have is that the
17 defendants have listed about 20 witnesses as to whom they made
18 no disclosures under Rule 26A. And so some of those I have
19 depositions in other cases, so I kind of know who they are.
20 But some of them I have never heard of, can't figure out who
21 they are, have absolutely no idea why they are listed as
22 witnesses, and never had an opportunity to get any discovery
23 about them, even a deposition. And so I know that's -- I mean
24 it has been fully briefed, I don't need to reargue it here.
25 But to the extent that we're going to have a process in which

1 the Court permits the defendants to bring witnesses, in that
2 circumstance, first of all, I hope that the Court doesn't allow
3 it under the theory that we talked about, that disclosure had
4 to be done during the discovery phase. But if we are going to
5 allow it, I would like enough time that we have some process to
6 find out who these people are, and what they are going to talk
7 about, and maybe take their measure in a brief deposition. I
8 don't need seven hours, but --

9 THE COURT: Well, we can discuss that further, if
10 that's appropriate. I mean I think at this point that you
11 should prepare for trial, assuming that all of the evidence
12 that you want to put in will be in, and all of the evidence
13 that they want to put in will be in.

14 MR. YALOWITZ: I understand that.

15 THE COURT: To make it easier for you to be prepared,
16 if you don't have to deal with it.

17 MR. YALOWITZ: Right, I understand that. And that's
18 why I just wanted to put it maybe higher on your list than it
19 had been, because I would like that process, if you're going
20 to -- if you're going to give them that leniency.

21 THE COURT: In order to prioritize the limit of time
22 between now and then, I will try to get all of those issues
23 that particularly have to do with what you might anticipate as
24 evidence in this case, try to resolve that as early as
25 possible, and try to resolve most, if not all of that, between

1 now and December 16.

2 MR. YALOWITZ: That's great.

3 And then just the last sort of process issue is I
4 would like to package for you, in some way, a set of the
5 exhibits that we believe are the convictions of the
6 perpetrators and other individuals. And I think that the
7 admissibility of those convictions has been well briefed. I
8 don't know that the Court needs more briefing on it. I think
9 you have got plenty of briefing on everything, but I think it
10 would be useful for you to have sort of a physical set of those
11 convictions, so you can see them. And that might assist us.
12 And, also, I don't think it is appropriate to suss out the
13 defendant's objections to those convictions in front of the
14 jury, because the defendants' argument is that their argument
15 is the whole court system in Israel is unreliable. And that's
16 really not something the jury should be hearing. And it's not
17 really an issue for the jury anyway, it's an issue for --

18 THE COURT: Well, the jury is not going to hear any
19 argument with regard to objections to testimony or evidence.
20 Make your objection. If you have a ground for the objection,
21 you can state a one word ground for it. But in most cases I'll
22 know why you are objecting. And if you want further argument,
23 it will have to happen outside of the presence of the jury.

24 MR. YALOWITZ: Of course.

25 My goal is to get you some kind of a package that will

1 help us get the objections to those documents ruled on in
2 advance of trial, because I expect them to --

3 THE COURT: Well, I.

4 MR. YALOWITZ: -- come up early.

5 THE COURT: Let me hear from the other side, but this
6 may moot it. I think I will prefer for you to give me, first,
7 an opportunity to review the motions, and then reach out. You
8 can prepare it and be prepared to give it to me, but I'll reach
9 out to you if I need something further submitted to me to make
10 that determination. I'll also --

11 MR. YALOWITZ: The issue, if I may, your Honor, with
12 the convictions is there is no in limine motion on it. It was
13 both sides briefed it kind of inside the summary judgment. So
14 there is briefing on it, but there is not an application for
15 relief by either side.

16 THE COURT: Well, the only thing that I am interested
17 in, in the first instance, is in what form you are intending to
18 offer the conviction. And if you had said you have a certified
19 judgment of conviction, that's all I need to know. And they
20 are going to have to argue to me why that is not good enough.
21 And it can't be because it comes from Israel. It has to be
22 because there is some reason to believe that that doesn't meet
23 the standard requirements of admissibility. Whether or not you
24 need a witness to set that foundation is a different question.
25 But, you know, at this point, if you need further guidance, or

1 ruling with regard to those convictions, then indicate to them
2 which convictions you intend to offer, and see if they have an
3 articulable reason to object. And if they do, then you tell me
4 why it is admissible, and they can tell me why it is not. And,
5 quite frankly, not determinative by what the conviction is,
6 it's determined by -- I don't think. It is determined
7 by whether or not it reliably reflects an actual conviction
8 that occurred. If it does, there are not a whole lot of
9 legitimate objections to it. Even if it was, as they say, even
10 if a defendant was framed, it still doesn't change the fact
11 that there is a conviction. So I handle convictions the same
12 way. You couldn't come in, now, and litigate whether or not
13 the person is guilty of it or not guilty of it, if the limited
14 purpose of the conviction is to show the witness or person is,
15 in fact, convicted.

16 Now whether you want to argue whether or not that is
17 evidence that indicates there was a legitimate conviction or
18 illegitimate conviction, or whether or not what's supposed to
19 be inferred from that conviction, you know, that's a different
20 issue, and that may be an argument about what the conviction is
21 being offered -- or the purpose it is being offered. But if
22 you can articulate for me, if you think that that's going to be
23 an issue, in a letter, tell me you think that they are going to
24 have a problem with this, and you want an early ruling, during
25 the trial or before trial with regard to whether it is likely

1 that you are going to get that in based on what you say it is,
2 and based on some foundation to demonstrate that it is, in
3 fact, what it is. And obviously, if it's written on a yellow
4 pad that you found on the street, that is not good enough, give
5 me something else. And you have to tell me what basis it is
6 admissible under the rules.

7 MR. YALOWITZ: I think we'll get you a letter as soon
8 as we can put it together. It won't be overly long. And it
9 will, I think, be helpful to you. And I'm sure it will be
10 helpful to me.

11 THE COURT: I know what the defense is going to say,
12 they are going to say, Judge, I don't want them to just keep
13 slipping stuff into the record --

14 MR. ROCHON: No, Judge, I apologize for interrupting
15 you. But the reason I stand when Mr. Yalowitz is talking, is
16 not to disagree with him. I was going to wait till he sat down
17 to disagree with him. I agree with him. I think it would be
18 helpful to the Court if he were to provide the Court with that
19 which he seeks to admit. And so I don't object.

20 THE COURT: You know, I assumed that you guys were
21 already beyond that, but --

22 MR. ROCHON: I don't think the Court has had the
23 benefit of seeing how convictions are produced there. And I
24 think it would be helpful to your analysis, so I support the
25 request.

1 THE COURT: Fine. If you want to, put it in a binder
2 and send it to me. Then I'll look at it.

3 Anything else?

4 MR. YALOWITZ: I think we won't get that to your Honor
5 before Thanksgiving, but --

6 THE COURT: Okay, I have plenty to do between now and
7 then.

8 MR. YALOWITZ: Okay, I don't have anything else,
9 unless your Honor has questions.

10 THE COURT: Let me see what issues need to be
11 addressed at this point, or what comments are going to be made
12 by defense.

13 MR. ROCHON: Thank you, your Honor.

14 First, a few administrative things. And then some
15 areas where we might disagree with the plaintiffs.

16 The first is just on the witnesses and the length of
17 trial. There is a lot of civilian witnesses we'll be calling.
18 It's gonna be very short crosses. They should be ready to roll
19 these people in and out. I figure everyone knows that, but I
20 thought I would say it.

21 Hopefully, we are not going to be silly enough to be
22 cross-examining the people who suffered from these injuries a
23 long time, when they don't offer real evidence as to liability.
24 I am not giving away any state secrets there.

25 I think the trial will go relatively quickly, more

1 quickly than estimated by the plaintiffs.

2 And the second, and you can decide this later, but on
3 February 12, given that we are all from out of town, it would
4 be nice for us to not come up and have a -- you get the point.

5 THE COURT: The 13th, you are saying.

6 MR. ROCHON: Yeah, I will be pushing you for a
7 five-day weekend.

8 THE COURT: I understand that. And as I say, usually
9 my approach is usually this way. If we get a good start, and
10 it looks like we're ahead of what I told the jury we were going
11 to do, then I am comfortable doing that, and may be comfortable
12 having that. And I am usually in a situation where I give the
13 jury what I think is the outside time, and we end up not using
14 that much time, so they are not disappointed. They are happy
15 that we have efficiently moved forward.

16 We'll talk about that as we get closer. But it would
17 be -- if we are moving efficiently, I think even the jurors
18 might appreciate that long weekend.

19 MR. ROCHON: Yes. And you would look like a hero.

20 So the other thing is, on the anonymous jury, do you
21 plan on telling the jury that the parties don't know their
22 names and addresses, or do you --

23 THE COURT: Yes. I intend to tell the jurors that I
24 am not disclosing their names and addresses to anyone, not even
25 the parties, because I want them to fill it out, and I'm going

1 to concentrate on what I'm going to do. That's another reason
2 why I want to bring them in and speak with them before they
3 even start the questionnaires.

4 MR. ROCHON: Yeah.

5 THE COURT: Because I want them to have that. And
6 I'll say it in an appropriate way that, look, you know, this is
7 what the case is about. And then I will ask you to fill out
8 questionnaires. And I would like you to be obviously honest
9 and straightforward about your answers. This is a process.
10 And I emphasize to the jurors, even when I, you know, regularly
11 pick jurors that, look, this is not a process for the parties
12 or the Court to figure out whether you can be a fair and
13 impartial juror. We don't know. We can only go by what you
14 say. It's for you to determine whether you can be a fair and
15 impartial juror, and to let us know. So I want you to think
16 about these questions, and be honest and candid, and let us
17 know so we can make sure. Because we can't -- if we have a 10,
18 12 week trial, we can't find out eight weeks into the process
19 that this is something that is difficult or not possible for
20 you to do, you can't be a fair and impartial juror at that
21 time. So, you know, as I say, I have enough trial experience
22 that I know how to appropriately deal with the jurors and to
23 emphasize the point, but not prejudice the parties. So I think
24 if I can give them that assurance, right up front, then they
25 can be much more comfortable to be forthright and candid with

1 you in these questionnaires, or in further questions if we have
2 to individually question.

3 MR. ROCHON: And recognizing that if we didn't prevail
4 on that issue, I think having not prevailed, and I'm not trying
5 to reargue it, it is much more important we do that with you,
6 live, to see how they react to it.

7 THE COURT: It is unclear to me, from looking at the
8 questionnaire, what your position really was. Because the
9 questionnaire was set -- I mean you objected to an anonymous
10 jury. And I was not sure whether or not you were simply
11 concerned about not, you know, setting this up so that the jury
12 is anonymous, sequestered, and thinks that there is something
13 nefarious going on, or some dangers to them, or something like
14 that. But in the questionnaire, I didn't -- and I don't have
15 it in my mind clearly, the yellow and the blue, but I didn't --
16 I mean you didn't object to the cover sheet that said -- and I
17 don't know if you -- you may have rejected the language that
18 said that you are giving this information and only the Court is
19 going to have it. But I don't remember if you objected to
20 that.

21 MR. ROCHON: We did object. And I understand. I am
22 not trying to re --

23 THE COURT: If you feel strongly about it, I'm willing
24 to hear you further on that. Because if you think that there
25 is some prejudice, that there may be to your client if that is

1 done. But, you know, quite frankly, I think you're going to
2 lose what would otherwise be more of an opportunity to really
3 assess the questionnaires and really determine, particularly if
4 I give, as they say, I let you eyeball the jurors beforehand.
5 I'm not sure if you want to give up that opportunity to let
6 them be as candid as they can be, because they know that they
7 are not publicly being disclosed, their names and addresses,
8 and the individuals, who they are.

9 MR. ROCHON: Our preference would be to get the names
10 and addresses. I do hear the Court. And I have done it all
11 ways, myself, in terms of trial experience. Our preference
12 would be to know the names and addresses and have them not be
13 made publicly available, only counsel would know those names
14 and addresses. Because I think it helps the counsel in picking
15 a jury. That's our preference. Recognizing, you can go many
16 ways. And, look, I have to be honest, this is one where you
17 have a fair amount of discretion. I'm going to save the other
18 arguments for where I think maybe your discretion is more
19 limited. So we'll respect the Court's approach to it. Our
20 preference is to get the names and addresses and have them not
21 shared with others.

22 THE COURT: Okay. All right.

23 MR. ROCHON: In terms of juror issues, the one thing I
24 was going to ask is if the Court sometimes tells the jurors to
25 use one of the Court's entrances, and all the parties and their

1 witnesses and their hangers-on to use the other so we don't
2 have inadvertent contacts. I suggest that might be a workable
3 solution here.

4 THE COURT: That might be one of the approaches that I
5 take.

6 MR. ROCHON: Okay. Now, getting to the more
7 controversial issues.

8 On your ruling on the Daimler Gucci, I'm not trying to
9 reargue it.

10 THE COURT: That's fine.

11 MR. ROCHON: The motion for summary judgment, we also
12 included that as an issue. You have obviously indicated your
13 views on this issue more than once. We also moved for summary
14 judgment on personal jurisdiction. Your order did not
15 explicitly say that was denied. You made your point very
16 clearly. I take it that aspect of our motion for summary
17 judgment is --

18 THE COURT: Yes, that aspect is denied. Obviously, if
19 my position, if my ruling is that there is personal
20 jurisdiction, clearly no way I can grant summary judgment, you
21 know, inconsistent with that.

22 MR. ROCHON: Right. I wanted to clear that up. Our
23 client is considering whether it would seek appellate relief on
24 that issue, and therefore wanted to solidify it.

25 THE COURT: Sure.

1 MR. ROCHON: Next issue is, the focus is, and let me
2 be clear before Mr. Yalowitz says anything. I know that won't
3 stop this schedule. We are not pretending it would stop the
4 schedule for moving forward.

5 There is issues we would like to get guidance from the
6 Court on sooner, rather than later. I thought I would tell you
7 what they are.

8 THE COURT: Okay.

9 MR. ROCHON: The jury instructions on material support
10 and respondeat superior are the heart of the jury instructions.
11 There is a lot of other dreck. It is important dreck, but
12 that's the heart. Knowing where the Court is on those two
13 instructions, I think would help both sides
14 a lot. So if we can put those up front, I think everybody
15 would benefit.

16 THE COURT: What I will attempt to do, is to at least
17 give you some draft of the substantive instruction by the 16th
18 of December. And whether or not we can accomplish all of that,
19 you know, literally, I have to -- we've already begun, weeks
20 ago, spending the majority of my time on this case, as opposed
21 to other cases. And I anticipate that that's going to continue
22 to be the case, and even be the case through the holidays. So,
23 you know, I'll try to do that. But what I will do, then, I
24 will focus on trying to give you some draft before, or by that
25 time, of the substantive instruction. And I will even try to

1 put the whole thing together, the standard sort of instructions
2 about burden of proof, and witnesses, and that kind of stuff.
3 I'll just redecide so we can refocus on it. We can discuss the
4 kind of substantive instruction.

5 MR. ROCHON: That would be great. And our main area
6 of focus is just --

7 THE COURT: Let me stop you for a second. I'm not
8 sure that I got a proposed instruction from you on that. Did
9 I?

10 MR. ROCHON: Yes, sir.

11 MR. HILL: They may have been tendered with the
12 objections.

13 THE COURT: Right, it was tendered with the
14 objections.

15 MR. HILL: -- plaintiff's theory, when we were
16 proposing them.

17 THE COURT: My recollection was that I got a set of
18 proposed jury instructions from the plaintiff, but I did not
19 get a separate set of jury instructions from the defense.

20 MR. ROCHON: We did. But our objections on those
21 are -- our views are made known in our objections.

22 THE COURT: All right. So you fully propose, in your
23 objections, what the substantive instructions should be with
24 regard to the issues still in the case.

25 MR. ROCHON: Yes.

1 And, Judge, a lawyer told the truth today. That's all
2 I have.

3 THE COURT: Okay. Anything else?

4 As I say, this is where I am focused. This is how I
5 am approaching it. You should figure out what's the most
6 efficient way, and what you need to know early, and so we can
7 discuss that. And if there is something that we forgot to
8 discuss here, give me a letter, and then I'll quick respond.
9 But, otherwise, we will make progress between now and
10 December 16. And then we will have as much as we can determine
11 and discuss further on the December 16 on those issues that are
12 relevant to trying an efficient case, okay.

13 All right, thank you all.

14 One thing I will do, I'm going to push the
15 December 16th time to 11:00. Because the problem is any time
16 before trial, I'm really not available, because I'm trying to
17 get things done before the trial starts, so I'll probably have
18 a couple of matters. Let's say 11:00 o'clock.

19 ALL: Thank you, your Honor.

20 (Adjourned)